

In re: KHALID AL-KHATIB.
P.Q. Docket No. 01-0003.
Decision and Order.
Filed on March 15, 2002.

P.Q. – Fresh Almonds – Prohibited importation from Israel – Unintentional violation not a defense – Civil penalty, no requirement for uniformity.

The Respondent was charged with the prohibited importation of fresh almonds from Israel in one his airline flight bags. The Administrative Law Judge (ALJ) accepted Respondent's statement as credible that he did not know the regulations and that another person had put the almonds in the bag. The ALJ found that the importation of fresh almonds from Israel is strictly construed and that a person in possession of the prohibited product is in violation of the Act. Penalties do not have to be uniform, but the lack of knowledge of the almonds warranted a reduction in the proposed penalty.

James Booth for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This proceeding was instituted by a complaint filed on December 5, 2000, by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("USDA"). It alleges that on or about April 4, 2000, Respondent, Khalid Al Khatib,¹ violated the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167), the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) ("Acts"), and the regulations promulgated thereunder, (7 C.F.R. §§ 319.56(b), 319.56-2(e), 319.56-3, and 319.56-4) ("regulations"), by importing 1 kilogram of fresh almonds into the United States from Israel, at Detroit, Michigan.

A hearing was held in Columbus, Ohio, on October 3, 2001. Complainant was represented by James A. Booth, Esq. Respondent, Khalid Al Khatib, represented himself.

Law

Pursuant to its authority under sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. §§ 154, 159) and section 106 of the Federal Plant Pest Act (7 U.S.C. § 150ee) to prevent the entry into the United States of injurious plant diseases, injurious insect pests, and other plant pests, the Secretary of Agriculture has promulgated regulations to restrict the importation into the United States of certain

¹Respondent's name is hyphenated in the complaint. However, Respondent did not hyphenate his name in his answer.

agricultural articles from foreign countries and localities.

Part 319 of Title 7 of the Code of Federal Regulations (“C.F.R.”) covers foreign quarantine notices. 7 C.F.R. § 319.56(b) of the regulations forbids, except as otherwise provided in the regulations, “. . . the importation into the United States of fruits and vegetables from foreign countries and localities named and from any other foreign country and locality . . .” 7 C.F.R. § 319.40-1 defines “import (imported, importation)” as meaning “[t]o bring or move into the territorial limits of the United States.” 7 C.F.R. § 319.56-1 defines “fresh fruits and vegetables” as “[t]he edible, more or less succulent, portions of food plants in the raw or unprocessed state, such as bananas, oranges. . . peppers, lettuce, etc.” 7 C.F.R. § 319.56-2(e) allows for some nonrestricted fruits and vegetables to be imported under a permit issued in accordance with certain rules and regulations, e.g., those specifically listed in 7 C.F.R. § 319.56-2a through 7 C.F.R. § 319.56-2gg. Fruits and vegetables that can be imported from Israel are listed in 7 C.F.R. § 319.56-2t. This regulation does not include fresh almonds. Some fruits and vegetables from Israel can be imported after being treated as designated in 7 C.F.R. § 319.56-2x. Fresh almonds are not included. Section 10 of the Plant Quarantine Act authorizes the Secretary to assess a civil penalty of not more than \$1,000 per violation of the Act or regulations.

APHIS administers these regulations for the Secretary. It coordinates its efforts with the United States Customs Service at U.S. ports of entry, such as international airports, to intercept prohibited or restricted fruits, plants, pests, etc., to prevent them from entering and causing agricultural and economic harm within the United States. Complainant states that only one pest or disease brought into the country by a prohibited fruit or plant could cause “millions or even billions of dollars of damage to United States agriculture and trade.” In fiscal year 2000 APHIS spent 200 million dollars to prevent pests from entering the United States. (Complainant’s brief, p. 21; Tr. 69-74.)

Statement of the Case

On April 4, 2000, Respondent, Khalid Al Khatib, whose mailing address is 83 W.N. Broadway, Columbus, Ohio 43214, arrived at the Detroit, Michigan International Airport on a flight from Amsterdam. He had indicated on the U.S. Customs Declaration Form that he was not bringing any fruits or vegetables into the United States. After identifying himself to U.S. Immigration officials, he was allowed into the United States. He retrieved two pieces of luggage and proceeded to the U.S. Customs Service primary inspection point where the procedure is for the Customs official to ask arriving passengers if they have claimed all their luggage

and whether they had packed the luggage. Customs officials consider a passenger to be responsible for all contents of luggage in his/her possession regardless of whether the passenger may be carrying it for another person because “we have a lot of incidents where people will say after we’ve found contraband, that [it] isn’t their[s], they were carrying it for a relative or another personnel.” (Tr. 60.) Even if the person actually does not know that contraband is in his/her luggage, it is the Customs Service policy that “[i]ts still his responsibility to know everything that’s in his luggage. . . .” (Tr. 56-57.) The Customs Service does not accept excuses. The person in possession of luggage containing a prohibited matter will therefore “suffer the consequence.” (Tr. 55, 61, 103.)

A “roving” APHIS Plant Protection and Quarantine (PPQ) inspector, Leslie Johnson, as part of her job of randomly checking incoming passengers, checked Respondent’s Customs Declaration Form after he had cleared the Customs Service primary inspection point and wrote the letter “A” on the form to indicate that he was selected to proceed to the Customs’ secondary inspection point where his luggage would be opened and inspected. (CX 2.) The inspecting official discovered in one of the pieces of luggage in Respondent’s possession a plastic bag containing what the official identified as “food.” The inspector asked Craig Kellogg, an APHIS PPQ Operations Officer, to look at the “food.” Kellogg identified the food as fifty fresh almonds from Israel weighing one kilogram (a little over two pounds). He said fresh almonds are fruits and that their importation is prohibited by the regulations. (Tr. 26-49.) The fruit was confiscated and destroyed. Kellogg gave Respondent a “Notice of Alleged Violation” which stated that the fresh almonds violated 7 C.F.R. § 319.56 and further stated:

Section 10 of the Plant Quarantine Act (7 U.S.C. 163), Section 108 of the Federal Plant Pest Act (7 U.S.C. 150gg) and Section 3 of the Act of February 2, 1903 (21 U.S.C. 122) authorize the Secretary of Agriculture to assess a civil penalty not exceeding \$1000 against any person who violates any of these acts or any regulations promulgated thereunder, after notice and an opportunity for hearing on the record.

You may waive hearing and agree to pay a specified civil penalty in settlement of this matter. If you do not wish to pay a specified civil penalty in settlement of this matter and to waive hearing, a complaint will be issued charging you with the above violation and affording you an opportunity for a hearing. However, the civil penalty offered to settle this matter at this time shall not be relevant in any respect to the civil penalty which may be assessed after a hearing.

(CX-1.)

Kellogg told Respondent that he could pay a penalty of fifty dollars as settlement of the alleged violation. Respondent declined to pay the fine and told Kellogg that "he would like to take his chances on a hearing." (Tr. 49.)

After the complaint was issued, Respondent filed the following answer (unedited) in which he stated:

Sir:

On April 4th 2000 I was arrived from Amsterdam to Detroit on Flight NW 41, Originally I flight with my daughter inlaw from TelaVive to Amsterdam to Columbus via Detroit. What happend when we arrived to Amsterdam, we found out no confirmation to my daughter at the same flight to Detroit, so she has to leave in the evening to Detroit, and I flight in the morning

When I arrived to Detroit there was one of my daughter baggages with my flight, I found out when the officer open the laggage and it was belong to my doutrer and he found less than 1 kg of almond inside. It was a surprised to me, because when I filled the USDA card I marked no food so the officer was very upset and treated me as a criminal, Then he came and asked me to pay \$50 fine I tried to explain to him he did not respond so I refused to pay the fine at that time because I am honest and straight and I never done that before, I respect the law and I beleive in justice

This not a matter of \$50 It is a matter of accusing me as a lier Please understand that it was honest mistake by the airline since all laggage looks alike, And next time I will be very carfull before I sighn the card,.

All what I feel is that I am innocent, so I leave this case for your judgment, and sorry for this incident

Note: My addresses are the same:

My phone: No 614-2684970

614-8935172

fax; 614-2917248

Sincerely,

/s/

Khalid Al Khatib

At the hearing, Respondent testified that for the past seven or eight years he has made two trips a year to Israel. He said he knows that food like fresh almonds cannot be imported into the U.S. and, further, that he could never bring contraband into the country because he is always selected for inspection every time he returns to the United States. Respondent testified that he had made the trip to Israel in April 2000 to bring his daughter-in-law to the United States. He said they had four pieces of identical luggage of which two were his and two were his daughter-in-law's and that all four pieces had the name "Al Khatib" on them. The return flight went through Amsterdam where, due to some mix-up, Respondent and his daughter-in-law were not booked on the same flight from Amsterdam to Detroit. He took an earlier flight than his daughter-in-law and two of the four pieces of luggage accompanied him. When one of the pieces, which contained the almonds, was opened for inspection by the Customs Service in Detroit and revealed that it contained women's clothes, Respondent realized it belonged to his daughter-in-law. He said he did not know that she had packed almonds in her luggage and said she had not told him about the almonds. He indicated that succulent fresh almonds are a popular food in the Middle East and that his daughter-in-law, who accompanied him to the hearing but could not speak English, told him that "she put this small amount because -- she feel sorry because she don't know that it would cause all this problem. She brought it for her personal -- to eat it when she come to Columbus. So she feel very sorry about all the situation. She don't know that it would cause all these problems." (Tr. 81-97.)

Discussion

Respondent sought a hearing because he believes he did no wrong since he did not know that fresh almonds were in the luggage. I find his testimony credible that he did not know about the fresh almonds before the luggage was inspected. While ignorance of the law is never an excuse for committing a violation, ignorance of a material fact may, in other proceedings, be a defense. *U.S. v. Fieros*, 692 F.2d 1291, 1294 (9th Cir. 1983), cert. den. 462 U.S. 1120 (1983); *U.S. v. Lopez-Lima*, 738 F.Supp. 1404, 1412 (D.C. S.D. Fla. 1990); *U.S. v. Smith*, 592 F.Supp. 424, 434 (D.C. E.D. Va. 1984) vacated on other grounds, 780 F.2d 1102 (4th Cir. 1985). In other words, if the facts were as a person believed them to be there would be no violation. In this case, if as Respondent believed, there were no fresh almonds in the luggage in his possession, there would have been no violation. The Judicial Officer, however, has held that ignorance of law or fact is not a defense in plant quarantine cases. *Rene Vallalta*, 45 Agric. Dec. 1421 (1986). It is also the policy of the Customs Service to automatically hold responsible any person possessing luggage containing a prohibited matter regardless of whether the luggage may

actually have been owned by another person. Therefore, even though Respondent did not know that fresh almonds were in the luggage, the fact that they were in luggage which was in his possession constitutes a violation of 7 C.F.R. §§ 319.56(b) and 319.319.56-2(e).

The Judicial Officer's sanction (penalty) policy for violations is that sanctions should be warranted in law and justified in fact and that:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendation of the administrative officials charged with the responsibility for achieving the congressional purpose.

La Fortuna Tienda, 58 Agric. Dec. 833 (1999).

Complainant seeks a penalty of \$1,000 for the single violation in this case. In other recent plant quarantine cases, the most common penalty for a single violation seems to have been \$500, but Complainant has also sought penalties ranging from \$250 to \$1,000 (\$250 in *Cynthia Twum Boafo*, 60 Agric. Dec. 191 (2001); \$1,000 in *Meralda Miller*, 58 Agric. Dec. 287 (1999)). The Judicial Officer has held that sanctions do not have to be uniform. *Nkiambi Jean Lema*, 58 Agric. Dec. 291 (1999)². The penalties in thirteen plant quarantine cases cited in *Nkiambi* (fn. 6) ranged from \$125 to \$750. In some cases sanctions have been doubled for comparable violations without being "justified in fact." In *Guadalupe Ramirez Magana*, 60 Agric. Dec. 280 (2001), the penalty for importing prohibited mangoes was \$500, while the penalty for mangoes in *Meralda Miller*, *supra*, was \$1,000.

In this case, as in all plant quarantine cases, the importation of prohibited fresh fruits presents a potentially serious economic threat to American agriculture. While Respondent's violation was unintentional and his lack of knowledge of the fresh almonds is not a defense, they are still mitigating factors. In *Richard Duran Lopez*, 44 Agric. Dec. 2201, 2211 (1985), the Judicial Officer held that a penalty may be reduced for an unintentional violation of the regulations and may be reduced to

²In *Spencer Livestock Com'n v. Dept. Of Agriculture*, 841 F.2d 1451, 1457 (9th Cir. 1988), the Ninth Circuit affirmed that penalties imposed by the Judicial Officer do not have to be uniform, but in doing so noted that "the JO explained the factors that mandated a more extreme penalty in this case than in a similar recent case." The Judicial Officer's prior policy was that sanctions for comparable violations should have comparable sanctions: "The goal of uniform sanctions in contested cases for comparable violations of a particular regulatory act is an important part of the Department's sanction policy which has been followed under all of the Department's regulatory programs in recent years." *Toscony Provision Company, Inc.*, 40 Agric. Dec. 533, 540 (1981).

\$250. As for the deterrent effect of a penalty on Respondent, it is not likely that a penalty of any size will have a greater deterrent effect than Respondent's present knowledge, based on eight years experience, that he will be searched for contraband every time he enters the United States. Considering all the circumstances, I find a penalty of \$250 appropriate.

Findings of Fact

1. Respondent, Khalid Al Khatib, is an individual whose mailing address is 83 W.N. Broadway, Columbus, Ohio 43214.
2. On or about April 4, 2000, Respondent entered the United States at the Detroit, Michigan International Airport from Israel by way of Amsterdam.
3. The United States Customs Service inspected luggage in Respondent's possession and discovered in one luggage what was initially identified as "food."
4. An APHIS official identified the "food" as one kilogram of fresh almonds from Israel. Fresh almonds are fruits.
5. Respondent did not have knowledge of the fresh almonds being in the luggage in his possession.
6. Fresh almonds from Israel are not permitted to be imported into the United States without a permit.
7. Respondent did not have a permit to import fresh almonds from Israel into the United States.

Conclusion of Law

On or about April 4, 2000, Respondent, Khalid Al Khatib, imported one kilogram of fresh almonds from Israel into the United States in Detroit, Michigan, without a permit in violation of 7 C.F.R. §§ 319.56(b) and 319.56-2(e) of the regulations.

Order

Respondent, Khalid Al Khatib, is assessed a civil penalty of two hundred and fifty dollars (\$250.00). The penalty shall be payable to the "Treasurer of the United States" by certified check or money order and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office, Accounting Section
P.O. Box 3334
Minneapolis, MN 55403

within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 01-0003.

This Decision and Order will become final and effective 35 days after service on Respondent unless there is an appeal to the Judicial Officer by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145). This Order became effective April 26, 2002. - Editor).
